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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

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11 BRANDI PASSANTE,

12 Plaintiff,

Case No.: SACV12-01866-JVS (ANx)

13 vs.

14 HUNTER MOORE and JOHN DOES 1-25,

15 Defendants.

[PROPOSED] ORDER GRANTING
PLAINTIFF'S PRELIMINARY
INJUNCTION

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18 Before the Court is an Order to Show Cause re: Preliminary Injunction filed by Plaintiff
19 Brandi Passante (“Plaintiff” or “Passante”). (Doc. 5.) No response from Defendant having been
20 received and having considered the papers and heard oral argument, the Court GRANTS
21 Plaintiff’s Preliminary Injunction.

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1 **I. INTRODUCTION**

2 Plaintiff Brandi Passante (“Passante” or “Plaintiff”) became a celebrity after appearing in
3 the A&E reality show *Storage Wars* beginning in 2010. Defendant Hunter Moore’s (“Moore” or
4 “Defendant”) success is predicated on his “celebrity porn” and/or “revenge porn” websites. On
5 or about October 14, 2012 Passante learned that Moore had “Tweeted” images of someone
6 portraying her in a pornographic video. Within twenty-four hours Plaintiff learned that the
7 images were also posted on Moore’s Tumblr account and ultimately the full video was posted on
8 fleshbot.com. The video contains a “trojan horse” computer virus that begins to download when
9 the “play” icon is selected.

10 After Defendant failed to respond to cease and desist letters, Plaintiff filed this case On
11 October 25, 2012. Plaintiff asserts claims for false designation of origin and dilution by
12 tarnishment in violation of the Lanham Act, 15 U.S.C. §§ 1125(a), (c) (“Lanham Act claims”),
13 violation of California Civil Code §3344, violation of the right to privacy/right to control
14 publicity and likeness aka common law claim for commercial misappropriation, defamation *per*
15 *se*, invasion of privacy, disparagement, consumer fraud, and false light. Pursuant to Fed. Civ. P.
16 65, Local Rules 65-1 and 7-19, and concurrent with this complaint, Plaintiff filed her Ex Parte
17 Application for Temporary Restraining Order; Order To Show Cause Re: Preliminary Injunction,
18 And Order of Impoundment; Memorandum of Points and Authorities in Support on October 26,
19 2012. Defendant did not respond to the Order to Show Cause or appear at the hearings scheduled
20 on November 9, 2012 and November 16, 2012.

21 **II. LEGAL STANDARD**

22 To obtain a preliminary injunction in the Ninth Circuit Plaintiff must show (1) a
23 likelihood of success on the merits; (2) a likelihood of irreparable harm absent a preliminary
24 injunction; (3) that the balance of equities tips in favor of issuing an injunction; and (4) that an

1 injunction is in the public interest. *State of Alaska v. Native Village of Venetie*, 856 F.2d 1384,
2 1389 (9th Cir. 1988); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 374
3 (2008). A preliminary injunction is intended to preserve the status quo and prevent irreparable
4 loss of rights before judgment. See, e.g., *Textile Unlimited, Inc. v. A. BMH & Co.*, 240 F.3d 781,
5 786 (9th Cir. 2001); *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th
6 Cir. 1984). Because there is no adequate remedy at law, injunctive relief is the “remedy of
7 choice” in trademark cases. *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180 (9th
8 Cir. Cal. 1988).

9 **III. DISCUSSION**

10 **a. Likelihood of Success on the Merits of Her Claims.**

11 Plaintiff has established a likelihood of success on her Lanham Act claims.
12 Defendant’s use of Passante’s name and likeness in commerce in connection with a salacious
13 video and associated images, and his false and misleading claims that the video originated with
14 Passante were intended to deceive the public into believing that Passante was in some way
15 affiliated with Moore, thereby driving web traffic to his illicit website. The video disseminated
16 by Moore not only contains images that disparage Passante, but also contains a virus that poses a
17 threat to viewers who attempt to watch it. Passante has suffered emotional, physical and
18 psychological damage, including damage to her personal and professional reputation.

19 Moreover, Passante is a famous celebrity and thusly has a protectable right to publicity.
20 More than two years after Passante achieved her fame, Moore posted pornographic images and a
21 pornographic video, attributing them to Passante. The pornographic nature of the images and
22 associated video tarnish Passante’s reputation, celebrity and brand by their very nature, as they
23 allege she has taken part in immoral, lascivious acts. Moore’s use of Passante’s name and
24 likeness are commercial use as they are intended to misdirect traffic to his many websites to

1 further his infamy and lead to sales of his merchandise and music, which can be purchased
2 through links on the websites where the images appear. As a direct and proximate result of
3 Moore's violations of the Lanham Act, Passante has suffered damages that are incalculable.

4 Plaintiff has established that Moore has defrauded consumers by misrepresenting a
5 material fact consisting of the false representation that the female appearing in the images and
6 video posted on his websites is in fact Passante. Moore knew that his claims were false. Moore's
7 false statements are intended to deceive the public into believing that Passante participated in,
8 condoned, and/or authorized the publication of the video or is in some way affiliated with
9 Moore, thereby bringing web traffic and increased notoriety to Moore's illicit web site.
10 Followers of Moore justifiably rely on the misrepresentation as they accept the representation as
11 made and are led to believe that they are seeing images of a well-known celebrity. The false
12 claims result in damage because of the spread of the computer virus which downloads when
13 individuals lured to the website click on the play icon. As a direct and proximate result of
14 Moore's actions, Passante has suffered incalculable damages and irreparable harm.

15 **b. Absent Injunctive Relief Plaintiff Will Suffer Irreparable Injury**

16 Defendant damages Plaintiff's professional reputation by attributing lack of chastity and
17 immoral acts to Plaintiff when he falsely claims the woman in the pornographic video is in fact,
18 Plaintiff. Damage to one's professional reputation constitutes irreparable injury as one cannot be
19 made whole by financial recompense. Passante faces imminent harm as Moore has a long history
20 of posting illegal, immoral content, and a blatant, widely publicized refusal to remove that
21 content, even in the face of cease and desist letters, take down demands, and lawsuits.

22 **c. The Balance of Hardships Strongly Favors Plaintiff**

23 After balancing the interests of all parties and weighing the damage to each, Passante has
24 demonstrated that she will suffer greater hardship in the absence of a temporary restraining order

1 than Moore will by having to comply with one. Moore's actions will continue to cause great and
2 irreparable injury to Passante in that such conduct, among other things, may result in permanent
3 damage to her reputation and jeopardize her standing and goodwill with her existing and future
4 producers, directors and broadcasting networks. The harm to Passante in particular, due to the
5 damage to her reputation, and to the public in general, as a consequence of the computer virus,
6 far outweighs any harm that may result to Moore.

7 **d. The Public Interest Strongly Favors Granting Plaintiff Injunctive Relief**

8 If the Preliminary Injunction does not issue Passante will be irreparably harmed because
9 she cannot be made whole through monetary damages. Moreover, by allowing the video to
10 remain online the public is at risk for the associated computer virus. Defendant Moore's behavior
11 is an ongoing threat not only to Plaintiff who has no association with Defendant, but also to
12 innocent individuals whose only mistake is to trust the wrong sexual partner or risk sexual
13 congress with Moore himself whereupon they may find their intimate moments published online
14 for the world to view. For those who rely on Moore's salacious posts the risk of a computer virus
15 is very real and ongoing. Consequently, the public interest weighs in favor of injunctive relief.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Plaintiff's Preliminary Injunction.

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1 IT IS HEREBY ORDERED that Defendant Moore and his representatives and any other persons
2 or entities in privity or acting in concert or participation with Moore, immediately remove any
3 and all content of the Video from all websites under the control of Moore and be immediately
4 temporarily restrained from:

5 1. Posting, publishing, advertising, marketing, displaying and otherwise disseminating any
6 and all content of the Video and the associated virus.

7 2. Providing links from any website to any other website posting, publishing, advertising,
8 marketing, displaying and otherwise disseminating any and all content of the Video and the
9 associated virus.

10 3. Assisting, facilitating or encouraging others to engage in the conduct set forth above in
11 Nos. 1-2.

12 IT IS FURTHER ORDERED that Moore, his representatives, and any and all other persons
13 acting in concert or participation with Moore, with notice of this Order, shall preserve, and not
14 destroy, erase, delete, dispose of, or alter any documents or records, in whatever format,
15 including electronic documents, computer files, computer discs and drives, that relate to, reflect,
16 record, or contain any information regarding the origin, promotion, marketing, advertising,
17 purchase, sale, offer to sell, payment, storage, and/or distribution of any and all content of the
18 Video, or any communications with any party concerning the origin, promotion, marketing,
19 advertising, purchase, sale, offer to sell, payment, storage, and/or distribution of any and all
20 content of the Video.

21 IT IS FURTHER ORDERED that Moore, his representatives, and any and all other persons
22 acting in concert or participation with Moore, with notice of this Order, shall retrieve any copies
23 of any and all content of the Video or any information relating thereto which Moore has
24 previously delivered or communicated to any third parties.

SANCTIONS

The Court ORDERS that, to the extent that the Defendant does not comply with the terms of the Preliminary Injunction, the Defendant shall pay sanctions as follows:

\$250.00 per day after the initial seven (7) days that the Preliminary Injunction is in effect;

\$500.00 per day from day eight (8) to and including day fourteen (14); \$1,000.00 per day for every day after day fourteen (14).

IT IS SO ORDERED.

DATED: _____

JAMES V. SELNA
UNITED STATES DISTRICT JUDGE